

LABOUR DEPARTMENT

The 29th December, 1981

No. 9(1)81-6Lab./13935.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s India Drugs and Pharmaceuticals Ltd., Dundahera, Industrial Complex, Gurgaon :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 295 of 1980

between

SHRI SURESH KUMAR AND THE RESPONDENT MANAGEMENT OF M/S.
INDIAN DRUGS AND PHARMACEUTICALS LTD., DUNDAHERA,
INDUSTRIAL COMPLEX, GURGAON.

Present.—

Shri Brij Bhushan for the workman.

Shri M.P. Gupta for the management.

AWARD

This reference No. 295 of 1980 has been referred to this court by the Hon'ble Governor of Haryana *vide* his order No. ID/GGN/28-80/35917, dated 8th July, 1980 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Suresh Kumar and the respondent management of M/s. Indian Drugs and Pharmaceuticals Ltd., Dundahera Industrial Complex, Gurgaon. The term of the reference was :—

Whether the termination of services of Shri Suresh Kumar was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference notices were issued to the parties and they appeared in the court and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he was terminated on 27th October, 1979 by the respondent wrongly and illegally. The workman was removed from service and after removal there was a settlement between the workman and the management on 27th November, 1979 that the respondent will take back the workman from 1st January, 1980, but the respondent failed according to settlement.

The case of the respondent according to the written statement is that the workman was absent from duty from 22nd October, 1979 without any intimation or sanction leave for a period of more than 10 days and according to the terms and conditions of service applicable to him, he was deemed to have abandoned the employment of his own accord and his services stood automatically terminated by operation of law, and present dispute is not Industrial Disputes within the meaning of Section 2(a) of the Industrial Disputes Act, 1947. The workman does not disclose the identity of the workman or the date from which the service of the workman were allegedly terminated. The reference is vague and in-valid not maintainable and this Court has no jurisdiction to try the present reference. The workman was appointed on 12th September, 1979 as a Mazdoor purely on casual basis on a temporary vacancy for a period upto 8th December, 1979,—*vide* appointment letter dated 12th September, 1979. The workman while on duty got an attack of hysteria and he was sent to the hospital. There the doctor administered medicine and was discharged immediately. After 27th October, 1979

the workman did not join his duty or send any intimation to the authorities and absented himself from duty for a period for more than 10 days. There was no settlement as alleged by the workman between the parties. So the reference is vague and cannot be tried in this Court. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
- (2) Whether it is a case of abandonment of service by the workman, for his being absent from duty for more than stipulated period, without information ?
- (3) Relief.

After the issues framed, the parties lead their evidence. The respondent produced three oral witnesses Shri Sewa Ram, Clerk time office as MW-1, Shri Shiv Ram MW-2, Assistant in the respondent factory and MW-3 Shri D.R. Khoa, Assistant in Personal Deptt. and produced 14 documents. The workman produced one witness WW-1 Shri P. K. Thampi and comes as his own witness WW-2 and closed his case. I want to discuss issue No. 2 first, which is as under:—

Issue No. 2.—Issue No. is whether the workman abandoned his service voluntarily. To prove this issue the respondent produced the appointment letter Ex. M-3 in which it is clear that he was appointed as Mazdoor upto 9th December, 1979. The appointment letter dated 12th September, 1979 bears the signatures of the workman at mark 'B' which is admitted by the workman. The representative of the respondent argued that the workman was appointed *vide* Ex. M-3 as Mazdoor in a temporary vacancy on a purely casual employment and on a consolidated daily wages @ Rs. 7.80 P. In the appointment letter it is very clear written in Para 3 of Ex. M-3 that incase you remain absent continuously for eight days without previous intimation, your name will be struck off the rolls of the company. He argued that his name was struck off according to the conditions of the appointment, which is a legal one and the workman signed it and agreed to this condition at the time of appointment. When the workman did not come on duty after 27th October, 1979 his name was struck off from the rolls according to Ex. M-1 extract of the attendance register for the month of August and September, 1979. His name was struck off on 10th November, 1979 after being his absence. The workman sent one demand notice Ex. M-5 to the Conciliation Officer and the respondent. The respondent was called by the Conciliation Officer, Gurgaon on 27th November, 1979,—*vide* M-4 and the respondent participated in the conciliation proceedings and replied the same as in the written statement. Then again the respondent received another demand notice Ex. M-7 dated 13th March, 1980 of the workman and the respondent also received the letter from the Conciliation Officer, Gurgaon which is Ex. M-6, dated 13th March, 1980 for conciliation proceedings on 20th March, 1980. The same letter was received by the respondent on 21st March, 1980 and could not participate in the conciliation proceedings but sent the reply of the same to the Conciliation Officer, Gurgaon,—*vide* Ex. M-12, dated 1st April, 1980, but the Conciliation Officer, sent his failure report Ex. M-8 to the Labour Commissioner, Haryana with the statement of the parties Ex. M-9. The respondent received one letter Ex. M-10 from the Labour Commissioner, Haryana, dated 3rd May, 1980 for the same matter in which the workman might have written to the Labour Commissioner, Haryana for the settlement between the parties and the authority asked explanation for the same. On 19th June, 1980 the respondent replied the letter to the Labour Commissioner, Haryana,—*vide* Ex. M-11 and disclosed the whole story. He further argued that we got filled the Form Ex. M-13 if a person is employed on temporary job and Form Ex. M-14 is for the temporary appointment of a person in which there is a service condition mentioned according to their jobs. The workman's appointment letter was issued according to the Ex. M-14 performa. So the workman was appointed as casual labour for a specific period upto 9th December, 1979 on a temporary vacancy, but the workman got a hysteria attack on 27th October, 1979 and the workman was sent to Civil Hospital, Gurgaon and was discharged on the same day Ex. M-2 is a certificate from Medical Officer, Civil Hospital, Gurgaon and after this date the workman did not come to join his duties and he was marked absent upto 10th November,

1979 and his name was struck off after that date. He has further argued that the workman has admitted in his cross-examination as WW-2 that he was appointed for 90 days. It is very clear from the statement of the workman himself that he was a temporary employee. He further argued that the workman had never stated in his demand notice or in the claim statement that he was ill during that time and sent some medical certificate or application for leave which he has said in his cross-examination that after discharging from Civil Hospital he remained under the treatment of Dr. B. S. Grewal for seven days and sent the certificate for the same to the respondent and it is not supported by his own witness, Shri P.K. Thampi as WW-1. So all his statement is false and wrong which can not be believed. He further argued that in his demand notice the workman has stated that there was a settlement between the parties and which should have implemented, but there was no such settlement produced in this Court. There was no settlement between the parties, so even demand notice is wrong and false. The workman stated in his cross examination that there was no written settlement between the parties. It was only a oral settlement. Oral settlement was not proved on the file. It shown that there whs no settlement and the demand notice in false and wrong and cannot be believed. The workman abandoned his services by absenting himself from duties for a stipulated period and his name was struck off according to the terms and conditions of the appointment and there is nothing wrong in the removal of the workman who was a temporary on casual basis. So the workman has abandoned his service voluntarily.

The representative of the workman argued that the workman was appointed in June, 1977 as stated by Shri B.K. Thampi WW-1 for 90 days. After this period he was removed from the service and again appointed according to the appointment order. On 27th October, 1979 when the workman was on duty he fell un-conscious due to some dangerous medicine smell and he was got admitted by the respondent in the Hospital with the assurance that he will be taken back on duty after his recovery from illness and he will also be paid the expenses of the treatment. The respondent did not pay the expenses of the treatment to the workman, and when after recovery the workman came to join his duty he was refused to work without any reason. So on humanitarian ground he should be taken on duty and he paid his expenses which the respondent failed to provide this facilities. So the termination is not voluntarily and the workmen is entitled for reinstatement with continuity of service.

After hearing the arguments and going through the file I am of the view that the arguments of the representative of the management has some force to be believed. The workman has failed to produce any evidence for the settlement which he has mentioned in the demand notice. The workman has not mentioned about his illness and hospitalisation in his demand notice or claim statement. The workmen has not dis-closed anything in the demand notice that on what job he was appointed or when he was appointed and on what salary he was appointed he simply stated in his demand notice that the respondent has failed to implement the settlement between the parties which was agreed to be implemented upto 1st January, 1980 but there was no written statement between the parties which is admitted by the workman in the cross-examination. The workmen has put another story of sending the medical certificate and application to the respondent when he was ill which is an not be believed at delayed stage. He should have mentioned these facts in his demand notice the first opportunity with him. The statement of the workman could not be believed with such a false statement, and concealment of the facts. So I agree with the arguments of the representative of the management and this issue is decided in favour of management and against the workman.

Issue No. 1:

Issue No. 1 is as per reference. When issue No. 2 has been decided, in favour of the respondent, then there is no need of discussing this issue. The workman is not entitled to any relief as discussed in issue No. 2.

This may be read an answer to this reference. No order as to costs.

The 5th November, 1981

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3220, dated the 19th November, 1981

Forwarded (four copies) to the Commissioner and Secretary to the Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.